



2026:DHC:5916-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3006/2016, CM APPLs. 40885/2024 & 3195/2026**

SUDERSHAN KUMAR & ANR

.....Petitioner

Through: Mr. Viraj Datar, Sr. Adv. with
Ms. Jagrati Singh and Ms. Bhumika, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS Respondent

Through: Mr. Ankit Jain, Sr. Adv. with
Mr. Akshay Verma, ASC
Mr. Mananjay Kumar Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

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22.07.2026

C. HARI SHANKAR, J.

1. We have heard Mr. Viraj Datar, learned Senior Counsel for the petitioner in this writ petition.

2. The petitioners were appointed as Assistant Law Officers¹ in the North Delhi Municipal Corporation² on 2 August 2011 against vacancies which arose in 2004 and 2007, on current duty charge basis. They continued holding the said posts on current duty charge till their superannuation, which, in the case of Petitioner 1, took place on 31 October 2025 and in the case of Petitioner 2 took place on 30 June 2026.

¹ "ALO" hereinafter

² "NDMC" hereinafter



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3. On 28 January 2014, the posts of ALO which were being held by the petitioners on current duty charge basis were advertised for being filled by contract. The petitioners assailed the said decision before the Central Administrative Tribunal³ in OA 568/2014. By order dated 21 August 2014, the Tribunal quashed the advertisement dated 28 January 2014 and directed the respondents to re-examine the aspect of continuance of the petitioners on current duty charge till filling up of the posts through the Delhi Subordinate Services Selection Board.

4. In compliance with the said directions, a decision is stated to have been taken on 14 November 2014 to continue the current duty charge of the petitioners.

5. On 20 October 2015, four vacancies of ALO, which included the two vacancies which were being held by the petitioners on current duty charge basis were advertised for direct recruitment. This advertisement was also challenged by the petitioners before the Tribunal in OA 4643/2015. The petitioner also chose to challenge the Recruitment Rules, with which we are not particularly concerned today. The said OA was dismissed by the Tribunal on 20 January 2016 holding the challenge to the Recruitment Rules to be belated and the relief for regularisation to be barred by *res judicata* in view of the judgment dated 21 August 2014 in OA 568/2014.

³ "Tribunal" hereinafter



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6. It is this judgment which has given rise to the present writ petition.

7. While issuing notice in this writ petition on 20 May 2016, this Court directed that any appointments made against the four vacancies which were advertised on 21 October 2015 would be subjected to the outcome of this writ petition. In the interregnum, one more vacancy arose and, in 2019, the NDMC, while retaining the petitioners on current duty charge basis, filled the remaining three vacancies by direct recruitment.

8. Mr. Datar submits that, in June 2021, a proposal was mooted by the NDMC to regularise the petitioners against the posts which were held by them on current duty charge basis and that this proposal was also endorsed by the Standing Counsel of the NDMC. However, the proposal was rejected on 3 April 2024 and, on 28 May 2024, a fresh requisition was issued to fill up the posts by direct recruitment.

9. The petitioners challenged this requisition before this Court by way of CM APPL. 40885/2024 in which, by order dated 22 July 2024, this Court stayed the operation of the requisition dated 28 May 2024 to fill up the posts held by the petitioner on current duty charge basis by direct recruitment.

10. Thereafter, in October 2025 and June 2026, the petitioners have superannuated.



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11. Mr. Datar submits that, with their superannuation, much of the wind has been knocked out of the sails of the main grievances raised by the petitioners in their OA. However, he submits, relying on the judgments of the Supreme Court in *Jaggo v. Union of India*⁴ and *Shripal v. Nagar Nigam*⁵ as well as the judgments of the Division Benches of this Court in *New Delhi Municipal Council v. Kalpana Sharma*⁶ and *Pawan Sharma v. Govt. of NCT of Delhi*⁷, that, as the petitioners have continued on current duty charge basis from 2 August 2011 till their superannuation out of which, at least for the period from 20 January 2016 till their superannuation, they were continued by the NDMC on its own without any Court protection in favour of the petitioners, they should at least be entitled to pay protection, as would be available to candidates holding the posts on regular basis.

12. We are handicapped in returning any finding on this aspect in view of para 93 of the Seven-Judge Bench of the Supreme Court in *L. Chandra Kumar v. UOI*⁸, which may be reproduced thus:

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one

⁴ 2024 SCC OnLine SC 2826

⁵ 2025 SCC OnLine SC 221

⁶ Judgment dated 13 April 2026 in WP (C) 4646/2026

⁷ 2025 SCC OnLine Del 8313

⁸ (1997) 3 SCC 261



important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. *In such cases alone, the High Court concerned may be approached directly.* All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that *the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted.* By this, we mean that *it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.*”

(Emphasis supplied)

13. The aspect of whether, as a result of continued holding of the posts of ALO on current duty charge basis, the petitioners would be entitled to be treated at par with the persons who were holding the posts on regular basis in the light of the law laid down in **Jaggo**, it has not been raised before the Tribunal or, therefore, addressed by the Tribunal. The petitioners would, therefore, if they seek to ventilate any such cause, have to first approach the Tribunal in that regard.

14. In that view of the matter, we are of the opinion that the interests of justice would be best subserved by reserving the rights of the petitioners to move the Tribunal seeking the aforesaid relief by way of appropriate original proceedings. Should any such proceeding be moved, the Tribunal would, keeping in mind the fact that the petitioners are now retirees and that the relief sought by them would essentially impact their retiral benefits, deal with the matter with due expedition keeping, of course, in mind, the priority to which they are entitled to be assigned in view of the workload of the Tribunal.



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15. We have not expressed any observations on the merits of the petitioners' case.

16. Needless to say, should either side be aggrieved by the decision of the Tribunal, the right to challenge the decision in accordance with law would remain reserved.

17. The writ petition is accordingly disposed of in the aforesaid terms with no orders as to costs. All questions of fact and law are left open to be agitated before the Tribunal.

C. HARI SHANKAR, J

VINOD KUMAR, J

JULY 22, 2026

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